Judge Davis
Decided

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~519~~ ~~547~~ 45

E. TARVER, ADMINISTRATOR OF JAMES E. WILLIAMS, DECEASED, PLAINTIFF IN ERROR,

vs.

ELIAS KEACH AND E. M. PATRICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

FILED MARCH 4, 1871.

Dec. D. 1873

SUPREME COURT OF THE UNITED STATES.

No. 519.

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a THE UNITED STATES OF AMERICA, *ss:*

To the honorable, the judges of the supreme court of the State of Texas, greeting:

You are hereby cited and admonished to have a transcript and proceedings had by you thereon, in the case of Elias Keach & E. M. Patrick, plaintiffs in error, vs. James E. Williams, def't in error, No. 2059, decided at your regular term, A. D. 1870, at Galveston, before the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, at Galveston, wherein E. Tarver, administrator of James E. Williams, dec'd, is plaintiff, and Elias Keach & E. M. Patrick are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 24th day of May, A. D. 1870.

JOSEPH P. BRADLEY,
Asso' Just' Sup' Court, U. S.

(Indorsed:) E. Tarver, adm'r, pl'f in error, v. Keach & Patrick, def't in error. Citation.

b THE STATE OF TEXAS:

At a regular term of the supreme court of Texas, begun and held at Galveston, in the State of Texas, on Monday, January 10th, 1870—Hon. Amos Morrill, chief justice, and L. Lindsay, M. B. Walker, and James Denison, associate justices; Geo. W. Henry, clerk; and Frank Dicks, sheriff—the following case came on for hearing.

PATRICK & KEACH, PLFF'S IN ERROR,
vs.
JAMES E. WILLIAMS, DEF'T IN ERROR. } No. 2059. Error from Grimes.

1 *Transcript filed 23rd January*, 1867.

THE STATE OF TEXAS, *Grimes County:*

At a term of the district court begun and holden at Anderson, within and for the county of Grimes, on the 29th day of October, A. D. 1866, before the Hon. John R. Kennard, judge thereof, the following cause came on for trial, viz:

JAMES E. WILLIAMS, PL'FF,
vs.
ELIAS KEACH & E. M. PATRICK, DEF'TS.

Petition filed 5th Oct. 1866.

In the district court of Grimes.

STATE OF TEXAS, *County of Grimes:*

JAMES E. WILLIAMS, PL'FF,
vs.
KEACH & PATRICK, DEF'TS.

To the Honorable J. R. Kennard, judge of the district court sitting within and for the county of Grimes:

The petition of James E. Williams, who resides in the county of Grimes,

in the State of Texas, complaining against E. M. Patrick, who resides in the county of Washington, and Elias Keach, who resides in the
2 county of Galveston, in said State of Texas, respectfully represents that the said Patrick and Keach are lawfully indebted to petitioner; for that whereas heretofore, to wit, the said Patrick and Keach made, executed, and delivered to petitioner their certain promissory note in writing, and in words and figures as follows, viz:

"$10,000.]

"Twelve months after date we or either of us promise to pay James E. Williams, or order, the sum of ten thousand dollars in the common currency circulating at the maturity hereof, at its current rate, with ten per cent. interest from date, this November 27th, 1862.

"E. M. PATRICK.
"ELIAS KEACH."

Petitioner further represents that the consideration of said note was the plantation then owned and the homestead of petitioner, also the negroes thereon, and that at the date, execution, and delivery of said promissory note, and for other considerations, petitioner and his wife, Elizabeth Williams, executed and delivered their certain deed of conveyance to the said land and negroes; and they also delivered possession to the same unto the said Patrick and Keach, and that they
3 have been in the possession of the same ever since.

Petitioner further represents that in order to secure the payment of the said promissory note there was, by express agreement and stipulation, retained in the said conveyance the vendor's lien on the property therein conveyed; and for full and complete particulars of the property conveyed in the aforesaid deed reference is made to a certified copy thereof hereunto annexed, marked exhibit "A," and made a part of this petition.

Petitioner further represents that the said Patrick & Keach have failed, refused, and neglected, and still fail, refuse, and neglect to pay said promissory note, or any part thereof, altho' often requested so to do, and to the damage of petitioner fifteen thousand dollars.

Wherefore he brings suit, and prays that the said Patrick & Keach be duly cited to be and appear at the next regular term of court, to answer this petition, and he prays for judgment for his debt and the inter-
4 est thereon, according to the tenor and terms of said promissory note; and he further prays for a decree enforcing the vendor's lien on the property sold, as set forth in the deed of conveyance, and that the same may be sold, and the proceeds of sale applied to the payment of said note and interest thereon, and if after the application of the proceeds of sale of the land there should remain a balance due, then he prays for execution for the same, and petitioner prays for damages and all costs in this behalf expended, and for such other and further relief as unto equity and law belong, and he prays for general relief.

JAMES E. WILLIAMS,
By his attorney, DAN'L D. ATCHISON.

STATE OF TEXAS, *County of Grimes:*

We hereby waive the necessity of the issuance or the service of any process required to be served on us in this suit, and accept such service thereof.

January 6, 1866.

E. KEACH.
E. M. PATRICK.

Exhibit "A."

THE STATE OF TEXAS, *County of Grimes:*

Know all men by these presents that we, James E. Williams
5 and Elizabeth Williams, wife of the said James E. Williams, of the county and State aforesaid, of the first part, in consideration of the sum of six thousand dollars, cash in hand to us paid E. M. Patrick and Elias Keach, of the second part, and the further consideration of fourteen thousand in the two several notes of the said parties of the second part—one for four thousand dollars, due and payable on the first day of March, 1863, with ten per cent. interest from date; the other for the sum of ten thousand dollars, due twelve months from date, with ten per cent. interest from date—both notes bearing even date with this instrument, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, alien, and convey unto the said parties of the second part, their heirs and assigns, the following-described property, to wit: A tract or parcel of land lying in said county (Grimes County) containing four hundred twelve and $\frac{2}{3}$ acres, more or less, situated in and a part of the head-right league of John Peterson, and by him sold to Robert Peebles, and by said Peebles conveyed to W.
6 J. Kyle, and by said Kyle sold to McJ. D. & Y. W. H. McKissick, by said McKissick sold to James Moore, by his heirs conveyed to George Moore, and by the said George Moore to the said James E. Williams: Beginning at the southeast corner of said league, from which a post-oak, 16 inches diameter, bears S. 64° E. 10 varas; another, 14 inches diameter, bears S. 35° E. 15 varas; thence south 76° west, along the old league line, 1,245 varas, to a stake, from which hickory, 10 inches diameter, marked M., bears N. 73° W. $9\frac{1}{2}$ varas; thence N. 20° west 1,869$\frac{1}{2}$ varas, to an elm, from which a post-oak, 10 inches diameter, bears S. 20 E., $5\frac{1}{4}$ varas, and an elm, 6 inches diameter, bears S. 70° W., $2\frac{1}{2}$ varas, both marked M.; thence north 70° east 1,245 varas, to a stake, from which a hickory, 16 inches diameter, marked M., bears S. $22\frac{1}{2}$ W., $2\frac{3}{10}$ varas; another, 10 inches diameter, marked M., bears N. 33° W. $8\frac{4}{10}$ varas; thence south 20° east 1,862$\frac{1}{2}$, with the east line of said league, to the place of beginning. Also, the following-named negroes: Jack, a man, aged 38 years; Nancy, a woman, 38 years of age; Elvira, a woman, 38 years old; Jack, a man, 90 years of age; Adison, a man, 17 years old; John, a boy, 11 years old; Maria, a girl, 11
7 years old; Kitty, a woman, 35 years old; and George, a man, 48 years old.

To have and to hold the above-described land and negroes, together with all and singular the rights, members, hereditaments, and appurtenances to said land belonging, or in anywise incident or appertaining, as well as the future increase of said negroes. And we, the said parties of the first part, hereby bind ourselves, our heirs, executors, and administrators to warrant and defend the title to said land and negroes in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns forever, against the lawful claims of all persons whomsoever; but it is expressly understood, stipulated, and agreed by the parties that the vendor's lien is retained upon and against said land and negroes, to secure the payment of the above-mentioned notes, with all interest that may accrue thereon, upon the full payment of which this deed is to become absolute.

The words "dollars," above the 12th & 15th lines on the first page, interlined before signed.

Witness our hands this 27th day of March, A. D. 1862.

JAMES E. WILLIAMS.
ELIZABETH WILLIAMS.

8 THE STATE OF TEXAS, *County of Grimes:*

Before me, G. M. Mooring, clerk of the county court in and for the county aforesaid, this day came James E. Williams, and his wife, Elizabeth Williams, to me known, who stated and acknowledged that they had severally executed the foregoing annexed instrument of writing, bearing date the 27th day of November, 1862, to which their names appear as parties, grantors, for the purposes and considerations therein stated and contained; and the said Elizabeth Williams, wife as aforesaid, having been examined by me privily and apart from her said husband, and having said instrument fully explained to her, she, the said Elizabeth Williams, acknowledged the same to be her act and deed, and declared that she had willingly signed and delivered the same, and that she wished not to retract it.

To all of which I certify under my hand and seal of office, at office, in Anderson, this November 27th, 1862.

[L. S.] G. W. MOORING, *Clerk.*

9 Filed for record at 10 o'clock a. m. the 27th day of November, 1862, and recorded at 11½ o'clock a. m. December 15, 1862. To which I certify.

G. M. MOORING,
Clerk County Court Grimes County.

THE STATE OF TEXAS,
County of Grimes:

I, G. M. Mooring, clerk of the county court in and for the county aforesaid, hereby certify the foregoing three pages contain true copies of the originals, as appears of record in book D², pages 372 & 373, Grimes County records of deeds, &c. To which I certify under my hand and seal of office at office in Anderson, this Sept. 17th, 1864.

G. M. MOORING,
Clerk Co. Court Grimes Co.

Answer.—Filed Oct. 31st, 1866.

District court. Fall term, 1866.

JAMES E. WILLIAMS }
vs.
KEACH & PATRICK. }

Now at this term of the court come the defendants, by att'y, and excepts to the plaintiff's petition, and say that the same is insufficient in law, and that they are not bound to answer; wherefore they pray judgment.

10 And for answer def'ts deny all and singular the allegations in pl'ff's pet., and of this they put themselves upon the country; wherefore they pray judg't, &c.

And for further answer def'ts say that the note set out in pl'ff's petition was payable in the common currency of the country, circulating at the maturity of said note; that at the date of the execution of said obligation or note, and at the date of the maturity of the same, the common currency circulating in the State of Texas was treasury warrants issued by the authority of the State of Texas, and treasury notes issued by the so-called Confederate States of America; that said treasury warrants

purported to be an order upon the treasurer of the State of Texas for certain sum of money payable to a certain person therein named, or bearer, and signed by the person acting as comptroller of the State of Texas, and accepted by the person acting as treasurer of the State of Texas, by writing his name across the back of the same, and were in form and substance as follows:

"No. 6391.] *Treasury warrant.* [$1 00.

11 "The treasurer of the State of Texas will pay to Jno. P. Ford, or bearer, one dollar, out of appropriation 792, under act approved Jan'y 4th, 1862, for military service.

"COMPTROLLER'S OFFICE, *Austin, Feb.* 8, 1862.

"CLEM. W. JOHNS,
"*Comptroller.*

"C. H. RANDOLPH, *Treasurer.*"

and were issued and intended to circulate as money, and did circulate as common currency in the State of Texas at the maturity of said note, and in said was referred to, and intended as the common currency circulating at the maturity of said note, and the defendants now aver that said treasury warrants were illegal, null, and void, having been issued by the authority of the legislature of the State of Texas in violation of the constitution of said State and of the United States of America, and for the purpose of aiding and assisting the State of Texas, then in rebellion against the Gov't of the United States. The defendants further represent that the treasury notes of the so-called Confederate States of America in common use and circulating as the common currency
12 at the maturity of said obligation, and referred to and intended in said obligation as the common currency circulating at the maturity thereof, were promises to pay a certain sum of money therein mentioned, issued by the so-called Confederate States of America, being a confederation of certain States of the United States of America, including among others the State of Texas, in armed rebellion and resistance to the authority of the United States, and that said treasury notes were issued and intended to be used and circulated as money in aid of said rebellion, and were in form and substance as follows:

"RICHMOND, VA., *September* 2, 1861.

"Six months after the ratification of a treaty of peace between the Confederate States and the United States, the Confederate States of America will pay five dollars to bearer.

"No. 168403.

"E. C. GREEN,
"*For Treasurer.*
"B. MCRAE,
"*For Register.*"

That said treasury notes were illegal, null, and void, and were issued in violation of the Constitution of the United States of America,
13 and for an illegal and treasonable purpose.

The defendants further aver that at the maturity of the obligation set out in plaintiff's petition, said treasury warrants and treasury notes were the common currency circulating at that time, and that there was no other currency then in common circulation, and that said treasury warrants and "treasury notes" were referred to and intended

by the parties to said obligation, and no other, and this the defendants are ready to verify; wherefore they pray judg't, &c.

SAYLES & BASSETT.

Agreement.—Filed Nov. 1st, 1866.

Distret court. Fall term, 1866.

WILLIAMS
vs.
PATRICK & KEACH.

By agreement of the parties, a jury is waived and the cause is submitted for decision to the court upon the following case, agreed:

1st. The note of defendants in substance as follows: "$10,000. Twelve months after date we or either of us promise to pay James E. Williams, or order, the sum of ten thousand dollars in the com-
14 mon currency circulating at the maturity hereof, at its current rate, with ten per cent. interest from date. This November 27th, 1862.

"E. M. PATRICK.
"ELIAS KEACH."

2nd. The deed of J. E. Williams & wife to Patrick & Leach, a copy of which, marked Exhibit A, is made a part of this statement.

Deed from Williams to Patrick & Keach.

THE STATE OF TEXAS, *County of Grimes:*

Know all men by these presents that we, James E. Williams and Elizabeth Williams, wife of the said James E. Williams, of the county and State aforesaid, of the first part, in consideration of the sum of six thousand dollars, cash in hand to us paid E. M. Patrick and Elias Keach of the second part, and the further consideration of fourteen thousand in the two several notes of the said parties of the second part—one for four thousand dollars, due and payable on the first day of March, 1863, with ten per cent. interest from date, the other for the sum of ten thousand dollars, due twelve months from date, with ten per cent. interest from date—both notes bearing even date with this instrument, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, alien, and convey unto the said parties of the
15 second part, their heirs and assigns, the following described property, to wit: A tract or parcel of land lying in said county, Grimes County, containing four hundred twelve and $\frac{2}{5}$ acres, more or less, situated in and a part of the head-right league of John Peterson, and by him sold to Robert Peebles, and by said Peebles conveyed to W. J. Kyle, and by said Kyle to McJ. D. & Y. W. H. McKissack, by said McKissack sold to James Moore, by his heirs conveyed to George Moore, and by the said George Moore to the said James E. Williams: Beginning at the southeast corner of said league, from which a post-oak, 16 inches diameter, bears S. 64 E. 10 varas; another, 14 inches diameter, bears S. 35 E. 15 varas; thence south 76 west, along the old league line, 1,245 varas, to a stake, from which a hickory 10 inches diameter, marked M, bears N. 73 W., 9½ varas; thence north 20 west 1,869½ varas to an elm, from which a post-oak, 10 inches diameter, bears S. 20 E. 5½ varas, and an elm, 6 inches diameter, bears S. 70 W. 2½ varas, both

marked M; thence north 70 east 1,245 varas to a stake, from which a hickory, 16 inches diameter, marked M, bears S. 22 W. $2\frac{3}{4}$ varas; another, 10 inches diameter, marked M, bears N. 33 W., $8\frac{4}{10}$ varas; thence south 20 east $1,862\frac{1}{10}$, with the east line of said league, to the place of beginning.

Also the following-named negroes: Jack, a man, aged 38 years;
16 Nancy, a woman, 38 years of age; Elzora, a woman, 38 years old; Jack, a man, 90 years old; Adison, a man, 17 years old; John, a boy, 11 years old; Maria, a girl, 11 years old; Kitty, a woman, 35 years old, and George, a man, 48 years old:

To have and to hold the above-described land and negroes, together with all and singular the rights, members, hereditaments, and appurtenances to said land belonging, or in anywise incident or appertaining, as well as the future increase of said negroes; and we, the said parties of the first part, hereby bind ourselves, our heirs, executors, and administrators, to warrant and defend the title to said land and negroes in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, forever, against the lawful claims of all persons whomsoever.

But it is expressly understood, stipulated, and agreed by the parties that the vendor's lien is retained upon and against said land and negroes to secure the payment of the above-mentioned notes, with all interest that may accrue thereon, upon the full payment of which this deed is to become absolute. The word "dollars" above the 12 & 15 lines on the first page interlined before signed.

Witness our hands this the 27th day of November, A. D. 1862.

JAMES E. WILLIAMS.
ELIZABETH WILLIAMS.

17 THE STATE OF TEXAS, *County of Grimes:*

Before me, G. M. Mooring, clerk of the county court in and for the county aforesaid, this day came James E. Williams, and his wife, Elizabeth Williams, to me, who stated and acknowledged that they had severally executed the foregoing annexed instrument of writing, bearing date the 27th day of November, 1862, to which their names appear as parties grantors for the purposes and considerations therein stated and contained, and the said Elizabeth Williams, wife as aforesaid, having been examined by me privily and apart from her said husband, and said instrument fully explained to her, she, the said Elizabeth Williams, acknowledged the same to be her act and deed, and declared that she had willingly signed and delivered the same, and that she wished not to retract it; to all of which I certify under my hand and seal of office, at *in* Anderson, this November 27th, 1862.

[L. S.] G. M. MOORING, *Clerk.*

Filed for record at 10 o'clock a. m. the 27th day of February, 1862, and recorded at $11\frac{1}{2}$ o'clock a. m., December 15th, 1862.

G. M. MOORING,
Clerk County Court, Grimes County.

18 THE STATE OF TEXAS, *County of Grimes:*

I, G. M. Mooring, clerk of the county court in and for the county aforesaid, hereby certify the foregoing three pages contain true copies of the original, as appears of record in book D [2], pages 372 & 373, Grimes County record of deeds, &c.

To which I certify under my hand and seal of office, at office in Anderson, this Sept. 17th, 1864.

[L. S.]

G. M. MOORING,
C'k Co. Court Grimes County.

3d. It is admitted that the note above described is one of the notes described in said deed, and was given in consideration of the property conveyed in said deed.

4th. It is admitted that by the expression used in said note, "The common currency circulating at the maturity thereof," the treasury notes issued by the so-called Confederate States of America were meant and intended; that said notes were for various amounts and used and circulated as common currency at the date and maturity of said note of defendants, and that the intent and meaning of the parties was that the sum of money mentioned in the note of the defendants might be paid in confederate money, commonly called Confederate States
19 treasury notes, at their current rate, at the maturity of said obligation.

5th. It is admitted that Confederate States notes were substantially as follows:

RICHMOND, VA., *September 2nd*, 1861.

Six months after the ratification of a treaty of peace between the Confederate States and the United States, the Confederate States of America will pay five dollars to bearer.

No. 166,251.

R. F. BALL,
For Treasurer.
J. M. HUNTER,
For Register.

6th. It is agreed that judgment shall be rendered upon the foregoing statement of facts, and should the law of the case, in the opinion of the court, be with the plaintiff, there shall be judgment foreclosing the vendor's lien, as well as for the sum of money due and costs; and should the law of the case be with the defendants, they shall have judgment that they go hence without day and for costs.

DANIEL D. ATCHISON,
For Plaintiff.
JOHN SAYLES,
For Defendants.

Judgment.

JAMES E. WILLIAMS, PLAINTIFF,
vs.
E. M. PATRICK & ELIAS KEACH, DEF'TS, } Nov. 3rd, A. D., 1866.

20 This day came the parties, by their attorneys, and by agreement waived a jury and submitted the cause to the court.

And the court having heard the demurrer of defendants and duly considered the same, it is ordered that the same be overruled.

And the parties having submitted the cause upon an agreed statement of facts, and the court having heard the argument of counsel thereon, and duly considered the same, it is the opinion of the court that the law is for the plaintiff.

And it appearing to the court that the cause of action is liquidated and proved by the promissory note in writing, it is ordered that the clerk do assess the damages sustained by the plaintiff.

And the said clerk now here having assessed the damages at the sum of fourteen thousand and sixty dollars, the principal, and interest at the rate of ten per cent. on said promissory note, it is therefore considered by the court that the said plaintiff do have and recover of the said defendants the sum of fourteen thousand and sixty dollars, with interest thereon at the rate of ten per cent. per annum, together with his costs in this behalf expended.

And it appearing further to the court that said note was given to secure the payment of the purchase-money for the following-described tract of land, to wit:

A tract or parcel of land lying in said county, Grimes County,
21 containing four hundred twelve and $\frac{2}{5}$ acres, more or less; situated in and a part of the head-right league of John Peterson, and by him sold to Rob't Peebles, and by said Peebles conveyed to W. J. Kyle, and by said Kyle sold to McJ. D. & Y. W. H. McKissack, by said McKissack sold to James Moore, by his heirs conveyed to George Moore, and by the said Geo. Moore to the said James E. Williams: Beginning at the south-east corner of said league, from which a post-oak, 16 inches diameter, bears S. 64 E. 10 varas; another, 14 inches diameter, bears S. 35; E. 15 varas; thence south 76 west along the old league line, 1,245 varas, to a stake, from which a hickory, 10 inches diameter, marked M, bears N. 73 W., 9½ varas; thence north 20 west 1,869¼ varas to an elm, from which a post-oak, 10 inches diameter, bears S. 20 E. 5½ varas, and an elm, 6 inches diameter, bears S. 70 W. 2½ varas, both marked M; thence north 70 east 1,245 varas to a stake, from which a hickory, 16 inches diameter, marked M, bears S. 22½ W. $2\frac{3}{10}$ varas; another, 10 inches diameter, marked M, bears N. 33 W. $8\frac{4}{10}$ varas; thence south 20 east $1,862\frac{1}{10}$, with the east line of said league, to the place of beginning.

Also the following-named negroes: Jack, a man, aged 38 years; Nancy,
a woman, 38 years of age; Elzora, a woman, 38 years old; Jack,
22 a man, 90 years old; Addison, a man, 17 years old; John, a boy, 11 years old; Maria, a girl, 11 years old; Kitty, a woman, 35 years old, and George, a man, 48 years old.

To have and to hold the above-described land and negroes, together with all and singular the rights, members, hereditaments, and appurtenances to said land belonging or in anywise incident or appertaining, as well as the future increase of said negroes.

It is therefore considered by the court that said plaintiff do have and recover of the said defendants said sum of fourteen thousand and sixty dollars, principal and interest, with interest thereon from this date at the rate of ten per cent. per annum, together with his costs in this behalf expended; and it is ordered, adjudged, and decreed by the court, that the vendor's lien upon the above-described tract of land be, and the same is hereby, foreclosed, and that the clerk of this court do issue an order of sale, directed to the sheriff of Grimes County, commanding him, the said sheriff, to seize and sell the above-described tract of land as under execution, and that he apply the proceeds thereof to the payment and satisfaction of the said sum of fourteen thousand and sixty dollars, together with
all interest that may be due thereon, and the costs of this suit;
23 and if the said land shall sell for more than sufficient to pay off and satisfy said sums of money, then the said sheriff is hereby directed to pay over the excess to the defendants; but if the said land shall not sell for enough to pay off and satisfy this judgement, then the

clerk of this court is directed to issue execution for the balance remaining unpaid.

Bill of exception.—Filed Nov. 3rd, 1866.

In the district court of Grimes county, Texas. Fall term, 1866.

JAMES E. WILLIAMS
vs. } 1090.
PATRICK & KEACH.

Be it remembered that on this, the 3rd day of November, 1866, the above-entitled cause coming on to be heard upon the pleadings and agreed statement of facts, which is in writing and filed among the papers, and the argument of counsel, it was the opinion of the court that the law is for the plaintiff, and thereupon the court rendered judgment for the plaintiff for the amount of the note sued on, principal and interest, and foreclosing the vendor's lien on the land described in plaintiff's petition and exhibits, and subjecting it to sale, for satisfaction of said judgment; to which opinion and judgment of the court the defendants except, and pray*s* that their bill of exceptions be signed and sealed and
24 made a part of the record, which is accordingly so done in open court the 3rd of November, 1866.

Witness my hand and seal, using scrawl for seal, the day and year aforesaid.

JNO R. KENNARD, [L. S.]
Judge 7th Jud. Dist., presiding.

Petition for writ of error.—Filed 10th Nov'r, 1866.

In district court, fall term, A. D. 1866, cause No. 1090, decided at this, the fall term, A. D. 1866, Grimes County district court.

THE STATE OF TEXAS,
County of Grimes:

JAMES E. WILLIAMS, PLAINTIFF,
vs. }
E. M. PATRICK & ELIAS KEACH, DEF'TS.

To the district clerk of Grimes County district court:

The honorable the district court of Grimes, at the fall term thereof, to wit, on the third day of Nov., A. D. eighteen hundred and sixty-six, having rendered judgment in the above-entitled cause against the defendants and in favor of the plaintiff therein, for the sum of fourteen thousand and sixty dollars, the amount of the principal and interest of the note sued upon by the plaintiff, together with ten per cent. interest per annum upon said judgment, and costs of suit, and also having rendered judgment therein, enforcing and foreclosing the vendor's
25 lien upon the land set forth and described in plaintiff's petition, and ordering an order of sale to be issued to the sheriff of Grimes County, to seize and sell said land as under execution, to satisfy the said judgment in said cause rendered, &c., and the said defendants having given notice of appeal, &c., and desiring to remove and take up said cause to the honorable the supreme court of the State of Texas,

that the error, &c., of the judgment therein rendered by the honorable the district court aforesaid may be reversed and corrected.

Now, therefore, you are respectfully prayed to issue a writ of error in said cause, to remove the same as aforesaid, upon defendants giving bonds, &c., as required by law.

SAYLES & BASSETT,
Att'ys for Defendants.

I hereby waive the necessity of any process and notice required by law to be served on the plaintiff, and accept such service thereof, and that the clerk make out the transcript and forward to supreme court, Galveston, as soon as possible, in time for next term of said court.

DANIEL D. ATCHINSON,
Att'y for Plaintiff.

Assignment of error.—Filed 20th Nov., 1866.

PATRICK & KEACH, APPELLANTS,
vs.
WILLIAMS, APPELLEE.

26 The appellants assign for error that the court below erred in the judgement rendered on the case agreed.

SAYLES & BASSETT,
Att'ys for Appellants.

Bond for costs.—Filed 22d Nov., 1866.

JAMES E. WILLIAMS
vs.
E. M. PATRICK, ELIAS KEACH. } No. 1090.

Whereas James E. Williams, plaintiff, recovered a judgment in the district court holden in and for the county of Grimes, on the 3rd day of November, 1866, against E. M. Patrick and Elias Keach, for the sum of fourteen thousand and sixty dollars, besides costs of suit, and for the enforcement and foreclosure of the lien on, and order of sale of, the land in plaintiff's petition set forth and described, and the said defendants, Patrick & Keach, having filed their petition with the clerk of said court for a writ of error to the supreme court of the State:

Now, therefore, we, the said E. M. Patrick and Elias Keach, as principals, and B. W. Walker & G. W. Crawford, as securities, acknowledge ourselves indebted to, and bound to pay to, James E. Williams, the sum of two hundred dollars, conditioned that the said Patrick and Keach shall pay all the costs which may accrue in the supreme court, and which may have accrued in the district court in said case.

27 Witness our hands this, the 22nd day of November, 1866.

E. M. PATRICK.
E. KEACH.
B. W. WALKER.
T. W. CRAWFORD.

THE STATE OF TEXAS,
County of Grimes:

I, Franklin Brigance, clerk of the district court of and for the county of Grimes, do hereby certify that the foregoing thirty-one pages is a

true copy of all the proceedings in the case of James E. Williams against E. M. Patrick and Elias Keach, No. 1090, as appear of record in my office.

Given under my hand and the seal of the district court of Grimes County, on this 18th day of January, A. D. 1866.

[L. S.] FRANKLIN RRIGANCE,
Ck D. C. G. C.

28 In supreme court of Texas.

FEBRUARY 8TH, 1867.

PATRICK & KEACH } 2059. Error from Grimes.
vs.
J. E. WILLIAMS. }

This cause being called, was submitted on briefs.

FEBRUARY 17TH, 1868.

PATRICK & KEACH } 2059. From Grimes.
vs.
J. E. WILLIAMS. }

Death of defendant Williams suggested, and cause continued for parties.

FEBRUARY 4TH, 1869.

PATRICK & KEACH } 2059. From Grimes.
vs.
J. E. WILLIAMS. }

In this cause E. Tarver, administrator of the estate of defendant in error, Williams, appears and defends, and the bankruptcy of Patrick & Keach, plaintiffs in error, is suggested, and cause continued.

29 FEBRUARY 10TH, 1870.

PATRICK & KEACH } 2059. Error from Grimes.
vs.
J. E. WILLIAMS. }

Submitted on briefs.

MARCH 7TH, 1870.

PATRICK & KEACH } 2059. Error from Grimes.
vs.
J. E. WILLIAMS. }

This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of the court that there was error in the judgement of the court below, it is ordered, adjudged, and decreed, that the judgement of the court below be reversed and the cause dismissed from the docket, and the defendant in error, E. Tarver, administrator of James E. Williams, dec'd, pay all costs in this cause in the court expended, and this decision be certified below for observance.

30 CLERK'S OFFICE, SUPREME COURT,
Austin, Texas, Nov. 17th, 1870.

I, W. P. De Normandie, clerk of the supreme court of Texas, hereby certify that the foregoing twenty-nine pages contain a correct copy of the transcript, and all the orders, proceedings, and judgment of the court in the supreme court of Texas, in case No. 2059, Patrick & Keach, plaintiffs in error, vs. James E. Williams, defendant in error.

In witness whereof I have hereto set my hand and affixed the seal of said court at Austin the day and year above written.

[SEAL.] W. P. DE NORMANDIE, *Clerk*.

(Indorsed:) Patrick & Keach vs. James E. Williams.

31 UNITED STATES OF AMERICA,
Eastern District of Texas:

To the Hon. J. P. Bradley, associate justice of the Supreme Court of the United States, sitting within and for the eastern district of the State of Texas, at Galveston:

The petition of E. Tarver, administrator of the estate of James E. Williams, deceased, which estate is in due course of administration in the probate court of Grimes County, in the State of Texas, respectfully showeth, that said James E. Williams, at a regular term of the district court, begun and holden at Anderson, within and for the county of Grimes, on the 29th day of October, A. D. 1866, recovered a judgment against Elias Keach & E. M. Patrick for the sum of fourteen thousand and sixty dollars; that an appeal was taken from said judgment to the supreme court of the State of Texas; that said supreme court, at its regular term, holden at Galveston, A. D. 1870, reversed said judgment and dismissed the suit. A transcript of the record of the proceedings had before said supreme court, and a certified copy of its opinion, is now exhibited to your honor.

Petitioner shows that there is manifest error in said judgment
32 of the supreme court, in this: that the same impairs the obligation of the contract, and is in violation of the 1st article, section 10, of the Constitution of the United States; and the 14th amendment of said Constitution; also, article 1, section 14, of the constitution of the State of Texas. Petitioner shows, at the date of the rendition of the judgment and opinion as aforesaid, said supreme court existed solely under military rule and appointment, and, constituted as such, was subject to and bound by the acts of Congress and laws of the United States, as well as the jurisdiction of the Supreme Court of the United States, and its opinions and decisions on all questions arising out of the late civil war; that the opinion and judgment herein complained of is in direct conflict with the decision of the Supreme Court of the United States and the constitutions of the United States and the State of Texas. The premises considered, petitioner prays for a writ of error, in order that the said errors of the supreme court of Texas, as aforesaid, may be examined and reviewed by the Supreme Court of the United States; and for all process necessary herein, and for such other and
33 further orders as unto equity and law belong, and for general relief; and petitioner herewith tenders his bond.

E. TARVER,
Adm'r of est' of James E. Williams, dec'd,
By his att'y, DAN'L D. ATCHISON.

34 (Indorsed:) E. Tarver, adm'r of the estate of Ja's E. Williams, dec'd, plaintiff in error, vs. Elias Keach & E. M. Patrick, def'ts in error. Petition for writ of error.

The within petition is granted May 23, '70.
[SEAL.] JOS. P. BRADLEY,
Asso. Justice of the Sup. C't U. S.

[SEAL.] Attest: LEVI JONES,
Clerk U. S. Circ't Court, E. D. T. G.

Filed May 23d, 1870. Levi Jones, clerk.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Texas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between Elias Keach and E. M. Patrick and E. Tarver, administrator, &c., of est. James E. Williams, dec'd, wherein was drawn in question the construction of a clause of the Constitution of the United States, and decision was against the title, right, privilege, specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said E. Tarver, adm'r as aforesaid, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
36 Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the said United States for the eastern district of Texas, the 23d day of May, in the year of our Lord one thousand eight hundred and seventy.
[SEAL.] LEVI JONES,
Clerk U. S. Circ't Court, East' Dist. of Texas, at Galveston.

37 (Indorsed:) E. Tarver, adm'r of the estate of Jas. E. Williams, dec'd, plaintiff in error, vs. Elias Keach & E. M. Patrick, defendants in error. Writ of error.

Allowed May 23d, 1870.
[SEAL.] JOSEPH P. BRADLEY,
Associate Justice of the Sup. C't U. S.

[SEAL.] Attest. LEVI JONES,
Clerk U. S. Circ't Court, E. D. Texas, at Galveston.

Filed May 23d, 1870. Levi Jones, clerk.

38 UNITED STATES OF AMERICA, *ss:*

To ELIAS KEACH & E. M. PATRICK, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, where E. Tarver, adm'r of the est. of James E. Williams, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 24th day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] JOSEPH P. BRADLEY,
Asso. Justice of Sup. C't U. S.

Attest:
[SEAL.] LEVI JONES,
Clerk U. S. Circuit Court E. D. T., G.

39 We acknowledge service and waive copy.
Sept. 5th, 1870.

SAYLES & BASSETTS,
Att'ys for D'f'ts in error.

(Indorsed:) E. Tarver, adm'r, pl'f. in error, vs. Keach & Patrick, def'ts in error. Citation.

40 PATRICK AND KEACH *vs.* JAMES E. WILLIAMS. } No. 2059. Error from Grimes Co.

Among other consequences of the late war are the seemingly hard and apparently unjust and inequitable positions in which parties in courts are placed, relative to contracts either executed or executory, the consideration of which was confederate money either paid or promised. In each branch of this court, at Austin, Galveston, and Tyler, in the year '67 & '8, cases arose requiring an adjudication upon this question, and they received that attention and reflection which the amount in controversy demanded, and although other causes at subsequent terms of this court, involving the same points, have arisen, we have decided them, without further argument, by reference to the cases decided in '67 & 68. We will add that although we all could perceive the equity of section seventh of the ordinance number eleven of 1866, yet we were
41 equally unanimous in the decisions made thereon.

The same positions that were taken by this court were also taken by the courts of other Southern States, as appears by the reports subsequently published.

But our attention has been called to Thornington vs. Smith, lately decided by the Supreme Court of the United States, wherein that distinguished court has taken different views from those of the State courts. Were the question one affecting and contrary to the validity of a treaty, a statute of or authority exercised under the United States, we should be bound to yield our opinion to that of this high tribunal, "for the protection of the national jurisdiction and to prevent collission between

the State and national authority, and to *prevent* that harmony that should exist among judicial tribunals." But as the Supreme Court of the United States has not appellate jurisdiction in this case, and as the question, from its vocality, pertains to the courts of the States which composed the so-called Confederate States, by parity of reasoning, the decissions of the State courts ought to command our respect and attention.

42

The question considered by the Supreme Court of the United was, Can a contract for the payment of confederate notes, made during the late rebellion, between parties residing within the so-called Confederate States, be enforced at all in the courts of the United States? The Chief Justice admits that the question is by no means free from difficulty. He proce'ds "It was by this government exercising its power through an immense territory that the confederate notes were issued early in the war, and these notes in a short time became almost exclusively the currency of the insurgent States.

"As contracts, in themselves, excepted in the contingency of successful resolution, these notes were nullities, for, except in that event, there could be no *prayer*. They bore indeed their character upon their face, for they were made payable only after the ratification of a treaty of peace between the Confederate States and the United States of America.

43

"While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded therefore as a currency imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulat*ing*, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it had been issued by a foreign government, temporarily occupying a part of the territory of the United States.

44

"Contracts stipulating for payments in this currency cannot be regarded, for that reason only, as made in aid of the foreign invasion, in the one case, or of the domestic insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and though they may indirectly and remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further invasion or insurrection.

"We cannot doubt that such contracts should be enforced in the courts of the United States after the restoration of peace, to the extent of their just obligation."

We concur in the statements of the Sup. Court of the United States, as well as the just, legal, and proper inference to be drawn therefrom. Previous to the war the currency of Texas was, amongst its citizens, in their intercourse with each other, almost *almost* exclusively gold and silver. The confederate currency purported to be a promise on the part of the Confederate Government to pay certain amounts in two years after the success of the rebellion, and as a refusal to take this confederate money was tantamount to a disbelief in its success, and caused those then refusing to be suspected of favoring the United States Government, and, in the same ratio, of treason to the confederacy, and liable to be treated as traitors by provost marshals

45

located in every village, and appointed in consequence of their zeal to the cause of the rebellion, the result was that gold and silver were hoarded and burried for safety by those who had it, and *confed-*
46 *eracy* was the exclusive currency. But as the war progressed, and as their money became more abundant, and a doubt among many of the success of the rebellion also increased, and as no one was permitted, till near the close of the war, to act in any manner indicative of a doubt for the final result, it greatly appreciated in value, or, what is the same thing, property rose in value.

Those who had it, seeing that it was on a continued downward tendency, were ready to purchase any property for *for* it, but no one was compelled to sell his property except to officers of the government.

There w*a*re, however, those who had faith in the final success of the insurgents, and who acted accordingly.

Such sold their property, not only for this money paid down, but for the promise of it to be paid at future designated periods. It is to this last class that the case before us refers. It was not because the
47 necessities of the vender required him to sell his land that he sold it, since payment were to be made at a future time, and although he was criminated in the confederacy, he was just as free to make or refuse to make the contract as if he *he* had been living at the base of Bunker Hill monument, or in the British dominions; his coer*t*ion, and the influences surrounding him, either or military, bear no part in the transaction.

The facts show that the time of the contract, confederate money and gold were relatively of the value of one to ten; if the confederacy should succeed, what a chance for speculation; but if not, all would be lost.

The proposal to pay in one, two, & three years, in confederate money, ten times the value of the land held, was offered and accepted.
48 This was a gambling transaction, without the e*a*que*a*l consideration wherein the owner of the land stakes it *in* disinter*g*ration of the United States, and in case he wins he is to receive ten times the value staked.

We believe that we would be prostituting the halls of justice by adjudicating the*i*r respective rights of parties gambling on a horse race. Those who stake their property upon the disintegration and d*i*struction of their Government can receive no assistance in recovering it back in a court composed of judges whose inclination and determination to support Constitution and laws of the United States was not made more in*s*tense by the oath to do so.

We leave the parties where we found them, & where they voluntarily placed themselves.

From the reasons stated by the Supreme Court of the United
49 States, we disturb no transaction or contract executed in a qu*i*si government, nor shall we make this court accessory to perfecting the work of this qu*i*si government in its attempt to destroy our Government.

The judgment is reversed and the cause dismissed.

MORRILL.

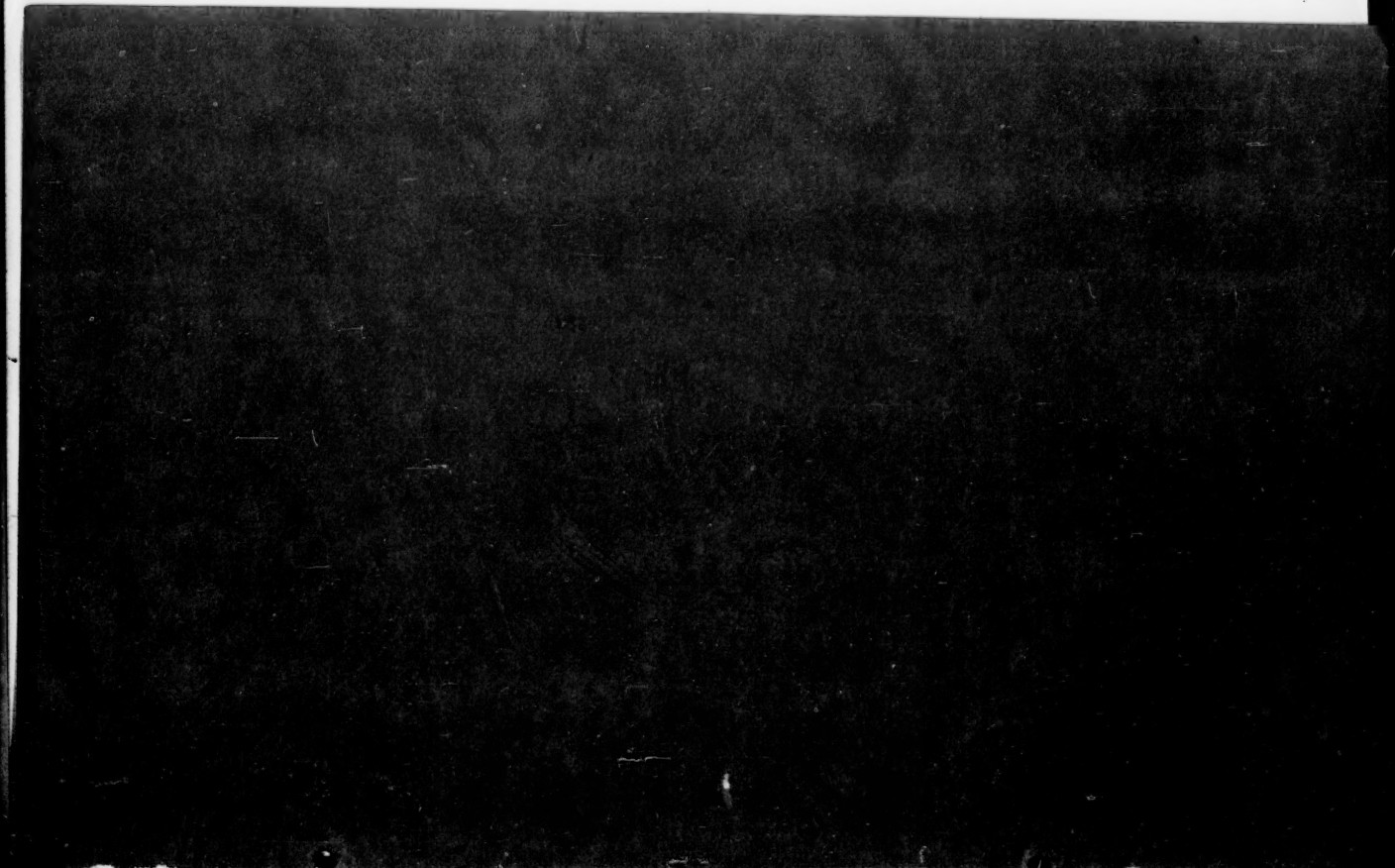
I, Ja's B. Shearer, cl'k sup'm court at Galveston, do hereby certify that the foregoing 9½ pages is a true copy of the opinion in the above-styled case & on record in this court.

Wherefore I set my hand and seal of this court this the 31st day of March, A. D. 1870.

[SEAL.] JAMES B. SHEARER,
Clerk Sup'm Court.

(Indorsed:) No. 2059. Patrick and Keach vs. J. E. Williams. Opinion of the court. Cl'k's fee, $5 00.

(Indorsement on cover:) No. 519. E. Tarver, ad'm of James E. Williams, dec'd, plaintiff in error, vs. Elias Keach and E. M. Patrick. Texas sup. court. Filed 4th March, 1871.



Supreme Court of the United States.

DECEMBER TERM, 1872.

E. TARVER, Administrator,
v.
ELIAS KEACH and E. M. PATRICK.
No. 75.

PLAINTIFF'S BRIEF.

On 27 March, 1862, James E. Williams, in Texas, sold to Patrick and Keach a tract of land and a number of slaves, for which, among other considerations, they gave their note, due at 12 months, for $10,000, "in the common currency circulating at the maturity hereof." The vendor's lien upon the property sold was expressly retained in the deed.

The suit was upon that note, and to foreclose the mortgage upon the land.

It was agreed, that "common currency" meant the treasury notes of the Confederate States of America; and that if the plaintiff had the right to recover upon such a contract, he should have a judgment foreclosing the vendor's lien upon the land for which the note was given; but if the law should be for the defendants, the suit should be dismissed. The district court rendered judgment for the amount due upon the note; the defendants prosecuted error; and the Supreme Court, on 7 March, 1870, reversed the judgment and dismissed the case. Mr. Justice Bradley allowed a writ of error to this court.

I. The first and almost the only question in the case is, has this court jurisdiction? For if it has, notwithstanding

the decisions in Texas and in this very case, to the effect that contracts promising to pay such currency are void, regardless of the considerations, this court will follow its own ruling in Thorington *v.* Smith, (8 Wall., 1–11,) which case the chief justice of the provisional court of Texas expressly overruled. (Record, pp. 15–18.)

These Texas cases, commencing with Smith *v.* Smith, (30 Tex., 764,) and ending with Trammel *v.* Philleo, (33 Tex., 395,) are carefully collated in Paschal's Digest of Decisions, pp. 594–597, §§ 7087–7113. They hold that all contracts which might be discharged in Confederate money, the considerations of which were Confederate money, or which looked to, squinted at, or were in any manner tainted with Confederate money, were treasonable, and therefore null and void; that, as in this case, where the consideration of the note was valuable, but the payment was to be made in such currency, it was executory, and the promissee could receive no aid from the court; and that the scaling ordinance of Texas, which virtually established the rule of this court in Thornington *v.* Smith, is in violation of the Constitution of the United States, and therefore void. (Paschal's Annotated Digest, p. 950, Ord. XI, § 7; and act of 10 November, 1866. Pamphlet, p. 128, to the same effect.)

II. These cases, it will be seen, establish it as a principle, that contracts which this court hold to be valid, and therefore protected by the Constitution, cannot be enforced.

A rule so often enunciated has all the force of a law of the State, and it is a law impairing the obligation of contracts.

Our case rests not alone upon the inhibition to impair the obligation of a contract, which has been expounded in so many thousands of cases, but we invoke to our aid the first section of the XIVth article of the Constitution: "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of

life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." And to section two of the act of 1867, in aid of this section. (14 Stat., 386; Trebilcock *v.* Wilson, 12 Wall., 689.)

One of the immunities of the citizen is to hold his contracts inviolate, and to enforce them in the tribunals, and to have the equal protection of the law. But here is a State which says that your contracts, which were held valid by the Constitution of the United States, as expounded by the supreme tribunal, and which might be enforced in the tribunals, are not contracts, but nullities. It is not a difference in the construction of contracts, but a declaration by the supreme tribunal of Texas, that solemn agreements, upon sufficient considerations, to do a lawful thing, are not contracts.

III. I cannot hope to improve the general principles as to jurisdiction enunciated by this court in Railway Company *v.* Whitton, (13 Wall., 238;) and in Trebilcock *v.* Wilson, (12 Wall., 689.)

And certainly the general principles stated in White *v.* Hart, (13 Wall., 647,) and Osborn *v.* Nicholson, (13 Wall., 655,) clearly show that a State cannot, even by its organic law, impair the obligation of a contract. This court, in the last case, approved the doctrine in the case of Somerset (20 Howell's State Trials, 79,) that it is enough that the contract is one to which the law attaches. (12 Wall., 657.)

I am aware that the rulings of the Supreme Court of Texas are not in favor of an organic law or statute of the State; but the act of the court is the act of the State, against the Constitution of the United States, all the same. It is really within the principle of Ableman *v.* Booth, (21 How., 506,) where no State statute, but only that of the United States, was involved.

But I place my chief reliance upon the first section of the XIVth amendment to the Constitution, the act of 1867,

and the fact that the amendment is so broad that it needs not full and complete legislation to give it effect.

IV. The injustice of allowing the purchaser to keep the property which he purchased, and at the same time to set up the illegality of his own part of the contract, and thus to defeat a decree of foreclosure, is so monstrous an injustice, that this court would strain hard to maintain its jurisdiction, in order to give to every citizen the equal protection of the laws.

Respectfully submitted,

GEO. W. PASCHAL.